

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

GREG WALCZAK

CIVIL ACTION

v.

ASPEN CONSTRUCTION SERVICES, INC. and  
KRIS KACZMARCZYK

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

June 8, 2018

Date

  
Attorney-at-law

Frank P. Spada, Jr.

Attorney for Plaintiff

(215) 887-0200

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FAX Number

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E-Mail Address

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**DESIGNATION FORM**

*(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)*

Address of Plaintiff: 4425 Edgemont Street, Philadelphia, PA 19137

Address of Defendant: 2136 Haworth Street, Philadelphia, PA 19124

Place of Accident, Incident or Transaction: 2136 Haworth Street, Philadelphia, PA 19124

**RELATED CASE, IF ANY:**

Case Number: \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- |  |                              |  |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?            | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 06/08/2018 \_\_\_\_\_ 48331/322817  
*[Signature]* Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

**CIVIL: (Place a ✓ in one category only)**

**A. Federal Question Cases:**

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☒ 11. All other Federal Question Cases  
 (Please specify): FLSA 29 USC Section 201, et seq.

**B. Diversity Jurisdiction Cases:**

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): \_\_\_\_\_
- ☐ 7. Products Liability
- ☐ 8. Products Liability – Asbestos
- ☐ 9. All other Diversity Cases  
 (Please specify): \_\_\_\_\_

**ARBITRATION CERTIFICATION**

*(The effect of this certification is to remove the case from eligibility for arbitration.)*

I, \_\_\_\_\_, counsel of record or pro se plaintiff, do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 06/08/2018 \_\_\_\_\_ 48331/322817  
*[Signature]* Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.



JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

GREG WALCZAK

(b) County of Residence of First Listed Plaintiff Philadelphia  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Frank P. Spada, Jr., Esquire and Joseph W. Fluehr, Esquire  
Semanoff Ormsby Greenberg & Torchia, LLC  
2617 Huntingdon Pike, Huntingdon Valley, PA 19006 (215) 887-0200

**DEFENDANTS**ASPEN CONSTRUCTION SERVICES, INC. and  
KRIS KACZMARCZYK

County of Residence of First Listed Defendant Philadelphia  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question  
(U.S. Government Not a Party)  
☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 490 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation - Transfer  
☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
FLSA 29 U.S.C. Section 201, et seq.  
 Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$  
50,000.00

CHECK YES only if demanded in complaint:  
 JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/08/2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

GREG WALCZAK

Plaintiff,

v.

ASPEN CONSTRUCTION SERVICES, INC.

and

KRIS KACZMARCZYK

Defendants.

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CIVIL ACTION NO.

**COMPLAINT**

Plaintiff, Greg Walczak (“**Plaintiff**” or “**Walczak**”), by and through his undersigned counsel, brings this lawsuit against Aspen Construction Services, Inc. (“**Aspen**”) and Chris Kaczmarczyk (“**Kaczmarczyk**”) seeking all available relief under the Fair Labor Standards Act (“**FLSA**”), 29 U.S.C. § 201, et seq., the Pennsylvania Minimum Wage Act (“**PMWA**”), 43 P.S. § 333.101, et seq., and the Pennsylvania Wage Payment and Collection Law (“**PWPCL**”), 43 P.S. § 260.1, et seq.

**JURISDICTION AND VENUE**

1. Jurisdiction over the FLSA claim is proper under 28 U.S.C. § 1331.
2. Jurisdiction over the state law claims is proper under 28 U.S.C. § 1367.
3. Venue in this Court is proper under 28 U.S.C. § 1391.

**PARTIES**

4. Plaintiff Greg Walczak resides at 4425 Edgemont Street, Philadelphia, PA 19137, and was employed by Defendant in its construction business between May 2017 through and including November 2017.

5. Defendant Aspen is a construction company that performs work in this jurisdiction and is headquartered at 2136 Haworth Street, Philadelphia, PA 19124.

6. Defendant Kaczmarczyk is the President of Aspen and is responsible for all construction activities and payments to employees for all work performed and is individually liable for failure to pay regular and overtime wages to Plaintiff for work he performed for Aspen.

**FACTS**

7. Aspen is a construction company that provides masonry work on various projects, both commercial and residential. They provide brick, block, stucco, siding and roofing services for its clients.

8. Aspen employs various laborers and masonry workers in order to provide construction services on its projects.

9. Plaintiff worked for Aspen and was paid on an hourly basis.

10. All time records and information pertaining to hours worked and compensation owed to Plaintiff is maintained at Defendant's corporate headquarters.

11. All paychecks, pay stubs, IRS W-2 forms and other payroll documents are generated through ADP, LLC and Aspen's pay stubs for payment to Plaintiff reflect Aspen Construction Services as his employer.

12. Aspen performed services during Plaintiff's employment in a variety of locations in Pennsylvania and New Jersey, including Philadelphia.

13. Defendants have failed to compensate Plaintiff for overtime wages due from May 1, 2017 through September 23, 2017, and from September 25 through November 17, 2017.

14. Defendants have failed to compensate Plaintiff for regular wages due from September 25, 2017 through November 17, 2017.

15. In addition to wages due, Defendants have failed to reimburse Plaintiff for expenses incurred for tolls, gas and construction supplies purchased while Plaintiff was working for Aspen. All other employees are compensated for these expenses incurred during daily work.

#### **COUNT I - FLSA**

16. Plaintiff incorporates the previous paragraphs as if fully set forth at length herein.

17. Plaintiff is an employee entitled to the FLSA's protection and Defendants are an employer required to follow FLSA mandates.

18. The FLSA requires Defendants to pay Plaintiff compensation calculated at 150% of their regular pay rate for all hours worked in excess of 40 hours per week.

19. Defendants violated the FLSA by failing to pay Plaintiff for all hours worked in excess of 40 hours in any work week.

20. In violating the FLSA, Defendants acted willfully and with reckless disregard of all clearly applicable FLSA provisions requiring payment.

#### **COUNT II- PMWA**

21. Plaintiff incorporates the previous paragraphs as if fully set forth at length herein.

22. Plaintiff is an employee entitled to the PMWA's protections and Defendants are an employer required to follow the PMWA mandates.

23. The PMWA requires Defendants to pay Plaintiff compensation calculated at 150% of their regular pay rate for all hours worked in excess of 40 hours per week.

24. Defendants violated the PMWA by failing to pay Plaintiff compensation for all hours worked in excess of 40 hours per week.

25. In violating the PMWA, Defendants acted willfully and with reckless disregard of all clearly applicable PMWA provisions requiring payment.

### **COUNT III – PWPCL**

26. Plaintiff incorporates the previous paragraphs as if fully set forth at length herein.

27. Plaintiff is an employee entitled to the PWPCL's protections and Defendants are an employer required to follow the PWPCL mandates.

28. The PWPCL requires employees to be compensated for all hours worked.

29. Defendants violated the PWPCL by failing to pay Plaintiff for all hours worked and for the reimbursement of expenses provided to all employees.

30. In violating the PWPCL, Defendants acted willfully and with reckless disregard of all clearly applicable PWPCL provisions requiring payment.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff seeks the following relief:

- A. Payment of all unpaid regular wages and overtime wages;
- B. Liquidated damages, penalties and/or pre-judgment interest;
- C. Attorneys' fees and costs; and
- D. Any other relief that this Court deems just and proper.

Respectfully submitted,

SEMANOFF ORMSBY  
GREENBERG & TORCHIA, LLC

BY: 

FRANK P. SPADA, JR., ESQUIRE

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